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**Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples**

# Gibraltar

**Working paper prepared by the Secretariat**

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# I. General[1]

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain it is 4.8 square kilometres.

2. The latest census of Gibraltar, taken on 14 October 1991, assessed the Territory's civilian population at 26,703, of which 20,022 were Gibraltarians, 3,811 other British subjects, 1,798 Moroccans and 1,072 of other nationalities. The estimated population on 31 December 2000 was 27,033. A new census of Gibraltar was taken on 12 November 2001, and the results were still being compiled when the present report was being completed.

# II. Political developments

## A. General

3. The 1969 Constitution guarantees basic civil and political rights and attributes. It assigns responsibility for local matters to a local Government. The United Kingdom, however, retains power over matters of defence, external affairs and internal security. The Governor, appointed by the sovereign of the United Kingdom, retains the power to rescind laws passed by the legislature. Furthermore, the Constitution reserves for the sovereign full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking that Constitution). A new Governor, David Durie, replaced outgoing Governor Sir Richard Luce in April 2000. A detailed discussion about the 1969 Constitution, including the positions of Spain and the United Kingdom, is contained in the report of the Special Committee to the General Assembly at its twenty-fourth session.[2]

4. Legislative authority is vested in a single House of Assembly consisting of 15 elected members. Executive authority is vested in a Council, which is composed of the Governor, four ex officio members, the Chief Minister and four elected members, and which assists the Governor in an advisory capacity. The Council of Ministers is made up of the Chief Minister, members of the House of Assembly designated by the Chief Minister, and some elected members. The Council of Ministers, which acts as a cabinet, holds responsibility for specific domestic matters, with the Governor retaining the prerogative to intervene in support of his responsibilities for defence and external affairs.

5. The legal system of Gibraltar is based on the common law and statute law of England. Gibraltar retains its own court system, which includes lower courts (Court of First Instance, Coroner's Court, Magistrate's Court), a Court of Appeals and a Supreme Court. The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. At present, it consists of the Chief Justice and an additional judge appointed by the Governor.

6. The United Kingdom's White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories",[3] presented to Parliament in March 1999, spoke of each Territory's need for a constitutional framework to suit its own circumstances and stated that suggestions from Overseas Territory Governments for specific proposals for constitutional change would be considered carefully. In June 1999, Gibraltar's House of Assembly set up a Select Committee on constitutional reform and on 27 February 2002 formally adopted a report on the matter. The Chief Minister said that the object of the exercise had been to achieve a Constitution that "maximized self-government", in the language of the United Nations decolonization proposals, and modernized domestic institutions to reflect this. (See A/AC.109/2002/11, para. 6, for details of the proposed constitution, as reported by the local media.) On 10 April 2002, in response to a question asked in the House of Lords, Baroness Symons stated that any proposals received from the Gibraltar Government would be carefully considered.[4] In his January 2003 New Year message[5] the Chief Minister stated that the Constitutional reform proposals had not been put formally to London in 2002 "because they would have been sucked into the Anglo-Spanish joint sovereignty negotiations". He said that it would be appropriate to start formal discussion of Constitutional modernization with the British Government in 2003. As constitutional reform was not the sort of issue that was "exclusively for the Government of the day", he said, his Government planned to widen local participation in the debate to include the present elected opposition, representatives of other political parties that confirmed an intention to contest the next general elections, and other relevant, established representative organizations.

## B. General elections

7. The last general elections in Gibraltar were held on 10 February 2000. Approximately 80 per cent of the 18,621 registered voters participated. The incumbent Gibraltar Social Democratic Party (GSD) obtained 58.35 per cent of the vote, followed by the Gibraltar Socialist Labour Party/Liberal Party alliance (GSLP/Liberal) with 40.57 per cent, and independent candidates, with 1.08 per cent. Consequently, GSD won eight seats in the Territorial House of Assembly and the GSLP/Liberal alliance seven seats. Peter Caruana, leader of the Gibraltar Social Democratic Party, obtained 8,747 votes and was appointed Chief Minister of Gibraltar. The GSLP/Liberal alliance, led by Joseph Bossano, forms the opposition.[6]

## C. Recent developments

8. The British Overseas Territories Bill, which confers British citizenship on British Overseas Territories citizens, completed its parliamentary process in 2001-2002. It received Royal Assent on 26 February 2002 and became the British Overseas Territories Act 2002 (see A/AC.109/2002/2/Add.1). Under the British Nationality Act of 1981, British Overseas Territories citizens from Gibraltar are, upon application, entitled to be registered as British citizens. Accordingly, many Gibraltarians already possess British citizenship and thus have the right of abode in the United Kingdom.[7] In July 2001, the Chief Minister of Gibraltar stated that for those Gibraltarians who already had or might in future want British citizenship, as opposed to British Overseas Territories citizenship, the new Bill represented a great improvement, as it gave "first class" British citizenship, without the need to apply to

register, and in such a way as to be automatically passed on to children and future generations.[8]

9. Although Gibraltar's military installations and personnel have been scaled down considerably in the past 15 years, the Strategic Defence Review launched by the United Kingdom Government in May 1997 placed renewed emphasis on the rapid deployment of British forces in response to crisis and pointed out that Gibraltar's facilities provided an independent forward operating base for British forces in the Mediterranean and served as a transit base for vessels en route to the Middle East and elsewhere. According to a report published in November 2002 by the Foreign Affairs Committee of the House of Commons, the Territory's strategic importance remains undiminished in the twenty-first century. Some 440 British military personnel are based in Gibraltar.[9]

10. The most significant political development for the Territory in 2002 was the continuation of the Anglo-Spanish negotiations on the subject of Gibraltar, relaunched in July 2001 in the framework of the Brussels process, and the Territory's response to these negotiations. In July 2002, the United Kingdom Foreign Secretary stated before the House of Commons that the United Kingdom and Spain were in broad agreement on many of the principles that should underpin a lasting settlement on Gibraltar, among them the principle that Britain and Spain should share sovereignty over Gibraltar (see para. 38 below). In response, the Government of Gibraltar announced that it would hold a referendum on the matter on 7 November 2002. The referendum resulted in 98.97 per cent of voters rejecting the concept of Anglo-Spanish joint sovereignty. The positions of the administering Power, the territorial Government and the Government of Spain regarding political developments in 2002 are reflected in section VI of the present report.

# III. Economic conditions

## A. General

11. Gibraltar has no known natural resources and lacks agricultural land. In the past the economy was largely dependent on Ministry of Defence expenditures, but with the downsizing of the military base, the economy has become focused on tourism and the provision of financial services, such as banking, insurance, shipping and portfolio management. The currency of Gibraltar is the pound sterling. According to the administering Power, the gross domestic product of Gibraltar in 2000 was £327.73 million, and per capita gross domestic product was £11,680.[10] Inflation in October 2001 was running at an annual rate of 2.3 per cent. According to the Chief Minister's 2003 New Year message, in spite of the global economic downturn, Gibraltar's economy continued to grow at about 5 per cent per year, a rate he considered high by European standards.

## B. Public finance

12. According to the administering Power, departmental revenue credited to the Consolidated Fund for the year ending on 31 March 2001 totalled £143.5 million and departmental expenditure amounted to £114.3 million. According to more recent figures the main sources of Consolidated Fund revenues were income tax, which

totalled £61.6 million; import duties, which totalled £29.9 million; and general rates, which totalled £11.6 million. The main Consolidated Fund areas of expenditure for the period April 2001 to March 2002 were as follows: education and culture, £17.2 million; electricity, £13.1 million; social security and social services, £11.5 million; technical services, £11.6 million; health, £8.7 million; police, £8 million; tourism and transport, £6.4 million; housing, building and works, £6.6 million; secretariat, £5.9 million; environment, £5.3 million; treasury, £4.2 million; customs, £3.3 million; fire service, £2.6 million; trade, industry and communications, £2.3 million; and employment and consumer affairs, £2 million.

13. The income tax rates applicable to individuals resident in Gibraltar range from 17 per cent on the first £3,000 of taxable income to 47 per cent after the first £23,000 (see A/AC.109/2001/10, para. 16, for details of income tax and exemptions).

## C. Trade

14. Figures for 2001 show that total imports amounted to £590.7 million (down from £659 million in 2000) and total exports to £362 million (down from £392 million in 2000). Nearly 40 per cent of Gibraltar's non-fuel imports originated from the United Kingdom. Other sources of imports included the Netherlands, Japan and Spain. Exports of goods of local origin were negligible. Exports consisted mainly of re-exports of petroleum and petroleum products supplied to ships. Import controls did not change during the period under review. Other than a few items of essential foodstuffs, gold bullion and gold coins, petrol, caravans, vessels, endangered species, fireworks and cigarettes, all goods can be imported under the Open General Licence.

## D. Banking and finance

15. Gibraltar's international financial services sector stems from the enactment of the Companies (Taxation and Concessions) Ordinance in 1967, which made provision for a special tax regime for offshore companies. In 1997, the Gibraltar Finance Centre was established within the Department of Trade and Industry as the focal point for all financial activities in the Territory. At the end of 2002, there were 19 banks authorized to conduct banking business in Gibraltar. As at 31 December 2002, there were also some 8,620 fully paid companies (down from 8,809 in December 2001) registered under the Companies (Taxation and Concession) Ordinance. These companies pay a fixed annual tax, irrespective of profits made and whether or not their profits are received in the Territory.

16. In recent years, the Government of Spain has expressed concern that European Union directives on financial regulation have not been fully implemented in Gibraltar, while the United Kingdom has provided different data (see A/AC.109/2001/10, para. 20). In July 2001, the European Commission launched an inquiry into Gibraltar's exempt and qualifying company legislation under European Union State Aid rules. Gibraltar initiated court proceedings against this decision, and the European Court of First Instance annulled the Commission's decision to investigate on procedural grounds. In April 2002, a government spokesperson stated that the authorities had devised a reform of the company taxation law that would

maintain government revenue but also allow the Finance Centre to prosper in the face of the threats and challenges posed by the Organisation for Economic Cooperation and Development (OECD), the European Community State Aid litigation and the European Union Code of Conduct relating to business taxation.[11] On 16 October 2002, the European Commission opened a formal investigation procedure into whether Gibraltar's proposed tax reforms were in compliance with State Aid regulations. In addition, on 27 November 2002, the Commission recommended that the United Kingdom take measures for the abolition or reform of the exempt-company regime in Gibraltar, specifically, that the United Kingdom close the exempt-company regime to new entrants, that it definitively abolish the tax exemption by the end of 2005 at the latest and that it make a public statement on the steps it would take to repeal or reform the regime by the end of January 2003.[12]

17. A report issued in June 2000 by OECD included Gibraltar in a list of 35 jurisdictions that met the technical criteria for being tax havens.[13] On 28 February 2002 the Gibraltar Government agreed in writing to implement the principles required by OECD. On 14 March 2002 OECD announced that Gibraltar had made commitments to transparency and to implement an effective exchange of tax information with OECD countries by 31 December 2005, and would thus be removed from the list of uncooperative tax havens.[14] The detailed list of commitments made by Gibraltar in order to comply with OECD requirements was published in both the Gibraltarian and the Spanish media.[15]

## E. Transportation, communications and utilities

18. According to the administering Power, arrivals in Gibraltar are by air, primarily from the United Kingdom; by sea, comprising ferry arrivals from Morocco and day-trip arrivals from cruise ships; and by land, comprising mainly day visitors arriving from Spain. Passenger arrivals for 2002 were as follows: air arrivals, 115,681; ferry arrivals, 146,622; cruise visitors, 116,918; and visitor arrivals by land, 7,375,112.

19. Regarding road transportation in and out of Gibraltar, in recent years the border issue has continued to be raised by the United Kingdom in contacts with the Spanish authorities (see A/AC.109/2001/10, para. 22, and A/AC.109/2002/11, para. 20). On 18 March 2002 the European Commission announced that it was closing its investigation into restrictions at the Gibraltar-Spain border, "having found no evidence to legally support claims that the checks carried out by the Spanish authorities ... are disproportionate and therefore incompatible with Community law." On 19 March the Spanish Government expressed satisfaction at the Commission's decision and announced that, taking into special consideration the mutual trust between the two Governments within the Brussels process, Spain had decided to accede to a request from the British authorities to open up an additional lane for private cars driving into Spain as of 21 March, thus speeding up border traffic "without altering compliance by the Spanish authorities with the control obligations imposed by European regulations at that point of entry into the Schengen area and the territory of the customs union".[16]

20. There are regular airline services linking Gibraltar to the United Kingdom and Morocco. In recent years, the issue of Gibraltar's airport was reported to be holding up European Commission aviation agreements on a "single European sky".[17] On

5 September 2001, the European Parliament approved a motion that almost unanimously called for, inter alia, the European Union Council of Ministers to resolve the dispute over the Gibraltar airport. As a result, the British Government agreed to suspend the application to Gibraltar of the Single European Sky package of measures. According to media reports, on 4 October 2001 thousands of Gibraltarians protested against this outcome.[18] In March 2002, the Gibraltar Government rejected as "illegal and politically unacceptable" further reported arrangements between Spain and the United Kingdom whereby both States would discuss which European Union aviation measures should be applied to the Territory and which should not.[19]

21. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. It has dry-dock facilities and a commercial ship repair yard. According to the Minister for the Port, 6,557 vessels called at Gibraltar in 2001, a 12 per cent rise over 2000.[20]

22. The local telephone system is operated by Gibraltar NYNEX Communications Ltd., while the international system is operated by Gibraltar Telecommunications International (Gibtel). In July 2001, the Government transposed European directives into the Gibraltar Telecommunications Ordinance 2000, thereby liberalizing communications and opening the industry to competition. In September 2001, Gibraltar NYNEX Communications and Gibtel came under common ownership, with the Gibraltar Government and Verizon as shareholders. At the end of 2002, there were 30,827 telephone lines in the Territory. In addition, a total of 12,167 people had mobile telephones provided by Gibtel.

23. In 1996, Gibtel and Gibraltar NYNEX lodged formal complaints before the European Commission alleging that the Government of Spain was in breach of European competition law in its non-recognition of Gibraltar's international dialling code and its prevention of mobile roaming agreements. The European Commission has not acted on these complaints. The matter of telephone lines in the Territory was raised by the United Kingdom both bilaterally in its meetings with Spanish authorities and at the European Commission throughout 2000-2001. Spain maintained that it would not accede to Gibraltar's request for 1 million additional telephone lines (see A/AC.109/2001/10, para. 26). In August 2001, the Spanish Foreign Minister announced that Spain was considering providing "several tens of thousands of telephone lines" to Gibraltar as a sign of "good negotiating will" towards the United Kingdom. The Minister maintained that his Government could not accept unfair competition with telephone companies operating in Spain.[21] The decision to allocate 70,000 lines to Gibraltar (additional to the 30,000 lines allocated to the Territory in 1986) was officially announced in Spain's *Boletín Oficial del Estado* on 8 November 2001. In January 2002, the Government of Gibraltar announced that it was rejecting the offer, as it was unacceptable politically, commercially and from a regulatory point of view.[22] At the end of 2002, the situation remained unchanged.

### F. Tourism

24. The total number of passengers arriving in Gibraltar in 2001 was 7.4 million, most of whom were day visitors. There were 53,776 hotel arrivals in 2001, up from 48,949 in 2000. The Territory's most recent tourism campaign is aimed at the United Kingdom market; it stresses Gibraltar's changed image, from a garrison town to an attractive Mediterranean destination.[23]

## IV. Social conditions

### A. Labour

25. According to the latest employment survey, the number of employees in Gibraltar was approximately 13,900. At the end of 2002, the distribution of persons employed by the five largest sectors was as follows: banking and finance, 2,342; public administration and defence, 2,668; retail trade, 1,912; building and construction, 1,596; and medical and health services, 979. The total number of unemployed persons at the end of 2002 was estimated at 460. The standard weekly rate of unemployment benefit is £37.20, with an increase of £18.30 a week for any one dependent adult. A total of 545 claims were received during 2001, of which 525 were allowed. Legislation regulating labour and employment conditions in the Territory is reported to be in line with European Union directives.

### B. Human rights

26. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are conferred upon it by the Constitution of Gibraltar or any other law. Several major international human rights instruments have been extended to the Territory by the administering Power (see A/AC.109/2001/10, para. 33).

27. On 18 February 1999, the European Court of Human Rights determined that, with regard to Gibraltar, the United Kingdom had violated article 3 of Protocol 1 to the European Convention on Human Rights, concerning the right to participate in European parliamentary elections (see A/AC.109/2001/10, paras. 35-36, and A/AC.109/2002/11, para. 29). The British Government has consistently stated that it is aware of its legal obligation to give effect to the 1999 ruling and is committed to ensuring that the people of Gibraltar are able to vote in European parliamentary elections. According to the Foreign Secretary, the British Government would have preferred to do this by amending the 1976 European Community Act, but having been unable to secure the necessary unanimous agreement of the Council of Europe, it decided to enfranchise Gibraltar by domestic legislation. On 21 November 2002, the British Government introduced a domestic bill, the European Parliament (Representation) Bill, to provide for the Territory's enfranchisement in time for the next elections, in 2004.[24]

## C. Social security and welfare

28. For details of the contributory schemes of the Social Security system, see A/AC.109/2001/10, paragraph 40.

## D. Public health

29. The Gibraltar Health Authority operates a group practice medical contributory scheme and gives registered persons access to free medical treatment (for a description of the available medical facilities see A/AC.109/2001/10, paras. 42 and 43). The expenditure of the Gibraltar Health Authority for the period from 1 April 2001 to 31 March 2002 was £31.44 million. In July 2001, the Government of Gibraltar and the Junta de Andalucía (the Government of the Spanish autonomous region of Andalusia) finalized an agreement whereby Gibraltarian patients would be eligible to receive medical treatment in hospitals in the nearby cities of La Linea, Algeciras, Cádiz and Málaga. In his 2003 New Year message, the Chief Minister emphasized efforts to increase medical staff in the Territory and to ensure that the new hospital, to be completed in 2003 would have the most up-to-date clinical and management practices.

## E. Public education

30. The Education Department continues to be in charge of public education in Gibraltar. Expenditure on education as at the end of March 2002 was £17.01 million. As at the end of 2002, there were 13 primary schools (11 of them Government-run, one private and one services school) with a total of 3,843 students enrolled. There were also four single-sex secondary schools: two Government-run schools, with a total of 1,794 students, and two private schools. There is also a technical and vocational college with 214 students enrolled. The number of teachers employed in Gibraltar during the 2002/03 academic year is 381. All tertiary education is sponsored, and students satisfying entry criteria are entitled to scholarships to study in the United Kingdom. Currently, 605 Gibraltarians are reportedly pursuing university studies in the United Kingdom.

## F. Crime and crime prevention

31. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police. According to data provided by the administering Power, from January to December 2002 1,330 persons were arrested for minor offences (such as those related to liquor, disorderly conduct and immigration violations). During the same period 942 persons were arrested for serious crimes (such as those related to violence against the person, sexual offences, burglary and drugs). In his 2003 New Year message, the Chief Minister stressed that Gibraltar was responding to global terrorism threats by stepping up security at entry points and establishing civil contingencies committees.

# V. Consideration by the United Nations

## A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

32. Members of the Government of Gibraltar and representatives of Spain and the United Kingdom attended the Pacific regional seminar to review political, economic and social conditions in the small island Non-Self-Governing Territories, held in Nadi, Fiji, from 14 to 16 May 2002.

33. At its 4th meeting, on 6 June 2002 (see A/AC.109/2002/SR.4), the Special Committee considered the question of Gibraltar, and had before it a working paper concerning the Territory (A/AC.109/2002/11). The Committee acceded to the request of the delegation of Spain to participate in the Committee's consideration of the question of Gibraltar. At the same meeting, the Chief Minister of Gibraltar, Peter Caruana, made a statement and replied to questions posed to him by the representatives of Grenada and Antigua and Barbuda. A statement was also made by Joseph Bossano, Leader of the Opposition in Gibraltar. Further statements were made by the representatives of Iraq, Grenada, and Antigua and Barbuda. At the same meeting, the Committee heard a statement by the representative of Spain.

## B. Special Political and Decolonization Committee (Fourth Committee)

34. At its 5th meeting, on 3 October 2002 (see A/C.4/57/SR.5), the Fourth Committee heard a statement by the Chief Minister of Gibraltar, Peter Caruana (see paras. 42-46 below), and a statement by petitioner Joseph Bossano, Leader of the Opposition in Gibraltar. At its 6th meeting, on 4 October (see A/C.4/57/SR.6), the Committee heard a statement by the representative of Spain (see paras. 49-50 below) and by the representative of the United Kingdom, who spoke in exercise of the right to reply (see para. 39 below). At the same meeting, the Committee adopted a draft decision on the question of Gibraltar (A/C.4/57/L.4) without a vote. After the adoption of the draft decision, statements were made by the representatives of Saint Lucia and Spain.

## C. Action by the General Assembly

35. At the 12th plenary meeting of the General Assembly, on 17 September 2002 (see A/57/PV.12), Ana Palacio, Minister for Foreign Affairs of Spain, made a statement and referred to the question of Gibraltar (see para. 48 below).

36. At its 73rd plenary meeting, on 11 December 2002 (see A/57/PV.73), the General Assembly, on the recommendation of the Fourth Committee, adopted decision 57/526 without a vote. The decision reads as follows:

> "The General Assembly, recalling its decision 56/421 of 10 December 2001, and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, inter alia, the following:

> 'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution',
>
> takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each country, the most recent of which were held in Barcelona on 20 November 2001 and in London on 4 February 2002, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."

# VI. Future status of the Territory

## A. Position of the administering Power

37. On 5 February 2002, the Foreign Secretary spoke to the House of Commons about the negotiations on Gibraltar (see A/AC.109/2002/11, para. 41) and described the British approach as follows:

> "There are four aspects to the approach that we have adopted: preserving Gibraltar's unique way of life; greater internal self-government for Gibraltar; practical benefits through cooperation; and putting the long-running dispute about sovereignty to rest."

38. On 12 July 2002, the Foreign Secretary made a statement on Gibraltar before the House of Commons, in which he said, inter alia:

> "After 12 months of negotiation, we and Spain are in broad agreement on many of the principles that should underpin a lasting settlement. They include the principles that Britain and Spain should share sovereignty over Gibraltar, including the disputed territory of the isthmus; that Gibraltar should have more internal self-government; that Gibraltar should retain its British traditions, customs and way of life; that Gibraltarians should retain the right to British nationality, and should gain the right to Spanish nationality as well; that Gibraltar should retain its institutions — its Government, House of Assembly, courts and police service; and that Gibraltar could, if it chose, participate fully in the European Union single market and other European Union arrangements.
>
> "Her Majesty's Government believe that a settlement along those lines would offer Gibraltar and its people a great prize. It would mean greater freedom for the people of Gibraltar to make decisions affecting their lives, and to live, work and travel without constraints anywhere in the region and beyond. It would mean greater prosperity and more jobs — from new opportunities to trade freely in the European Union, from the investment that would come if the dispute were settled, and with the prospect of millions of

pounds of European Union funding to help. It would mean a better quality of life, with improved telephone and transport services, a cleaner and healthier environment, a better infrastructure and faster communications. And it would mean a long-term, settled future: it would mean preserving Gibraltar's links with Britain, while developing a new and successful relationship with Spain.

"I profoundly believe that such a future is in the interests of the people of Gibraltar; but, as I have stressed many times, it is not in the end a decision for me or even for the House. The decision rests with the people of Gibraltar. If we and Spain can, after taking stock, reach agreement on the kind of framework that I have outlined, and if thereafter all parties can build on those principles to produce a comprehensive settlement, the whole package will be put to the people of Gibraltar in a referendum and they will decide.

39. Speaking before the Fourth Committee on 4 October 2002 (see A/C.4/57/SR.7), in exercise of the right to reply, the representative of the United Kingdom said that talks in Britain and in Spain had indeed made significant progress towards resolving a long-standing dispute. The two Governments had agreed on the principle of co-sovereignty, a historic achievement. The referendum currently being organized by the Gibraltar Government was a local initiative in which his own Government was not involved. Since no proposals on which to vote had been put forward, it was not clear what purpose it would serve. The principle of the consent of the people of Gibraltar was central to the British Government's approach to the future of Gibraltar. Once a comprehensive settlement with Spain was reached, it would be put to the people of the Territory in a referendum. However, since any change to the Gibraltar Constitution could trigger primary legislation in the United Kingdom, the British Government would expect, in consultation with the Government of Gibraltar, to oversee the organization and timing of any referendum with that purpose.

40. On 8 November 2002, a day after the referendum was held in Gibraltar, the British Minister for Europe, Denis MacShane, issued the following statement:

"The result of the Gibraltar Government's referendum comes as no surprise. Many on the Rock have long had serious concerns about a dialogue with Spain. I understand that, and will continue to listen to people's views. But the fact remains that there can be no stable future for Gibraltar while the dispute with Spain continues and important issues remain unresolved. We have always made clear that there will be no change to Gibraltar's sovereignty without the consent of the people of Gibraltar in a referendum. There are no such proposals on the table."[25]

## B. Position of the territorial Government

41. During 2002 the Chief Minister of Gibraltar made numerous statements on the status of Gibraltar and the Territory's position with respect to the ongoing talks between Spain and the United Kingdom. At the demonstration held on 18 March 2002, which is reported to have been attended by two thirds of the Gibraltarian population, Mr. Caruana read out the following declaration:

"We the people of Gibraltar here gathered declare as follows: 1) The future of Gibraltar both in practice and in principle, including our sovereignty,

can only be decided by the people of Gibraltar in exercise of our right to self-determination. 2) We reject and condemn, as a betrayal of our rights and wishes as a people, any Anglo-Spanish declaration of agreement of principles which makes in-principle sovereignty or other concessions to Spain against our wishes. 3) We therefore call on the British Government not to enter into any such agreements and we say: Yes to reasonable dialogue; Yes to good-neighbourly European relations with Spain based on reasonable dialogue and mutual respect; and No to in-principle sovereignty and other concessions to Spain against our wishes."[26]

42. At the 5th meeting of the Fourth Committee, on 3 October 2002 (see A/C.4/57/SR.5), the Chief Minister of Gibraltar, Mr. Caruana, referred to the annual General Assembly consensus resolution on the Territory calling upon Spain and the United Kingdom to continue their negotiations aimed at overcoming all the differences between them over Gibraltar. He asked whether this meant that the General Assembly was saying that the wishes of the people of Gibraltar could be disregarded. He went on to reject Spain's use of the principle of territorial integrity in order to deny Gibraltarians their right to self-determination. The United Nations continued to favour Spain and the United Kingdom in its annual consensus decisions. The people of Gibraltar urged the Committee to refer the case to the International Court of Justice for an advisory opinion; to amend the Committee's draft decision in order to give the people of Gibraltar an equal and separate voice in the dialogue; and to affirm the primacy of the wishes of the people of Gibraltar and the principle of self-determination.

43. Mr. Caruana went on to say that he had indeed declined an invitation to participate in bilateral British-Spanish negotiations, which had resumed the previous year under the so-called Brussels Agreement. That was because he would not have had an equal say or any assurances against being excluded from agreements reached between the United Kingdom and Spain. They would have used his presence to flesh out the details of an agreement on joint sovereignty that had been predetermined from the outset.

44. Despite a massive demonstration on 18 March 2002 by the population of Gibraltar to plead with the British Government not to make concessions on principle to Spain, and the unanimous adoption by the Gibraltar Parliament on 25 March of a resolution to that effect, the United Kingdom Foreign Secretary, Jack Straw, formally stated in the British Parliament that the United Kingdom and Spain were in broad agreement on many principles of a settlement on sharing sovereignty. According to Chief Minister Caruana, that amounted to betrayal and a violation of the Gibraltarian people's right to self-determination, the spirit of the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples. While the Foreign Secretary had claimed that nothing would be implemented without the consent of the people of Gibraltar, the very fact that the United Kingdom had felt free to enter into such an agreement was a violation of their political rights, in particular their right to self-determination. Even if the Gibraltarian people eventually rejected a joint-sovereignty agreement, that agreement would nonetheless remain in effect between the United Kingdom and Spain, and it would, in any case, be a number of years before the United Kingdom submitted the question to a referendum. Therefore, Gibraltar roundly condemned Mr. Straw's statement.

45. The Gibraltar Government's response had been to call its own referendum on 7 November 2002 in order to give the people of Gibraltar an early and timely opportunity to express their views on the question of joint sovereignty. Noting that the referendum would be observed by many independent international observers, Mr. Caruana invited the Committee, the Special Committee on Decolonization and the Office of the Secretary-General to designate observers as well.

46. Mr. Caruana added that the Spanish and British Governments had condemned the Gibraltarian referendum as an attempt to interfere in the successful development of their negotiations, a waste of money, a short-circuiting of democracy and a short-changing of the people of Gibraltar. The British Government's reaction had met with condemnation by all sectors of British society, including political parties, the press, trade unions, the business community and the public at large. He hoped the Gibraltarian position, particularly on referring the matter to the International Court of Justice, would be reflected in the Committee's draft decision.

## C. Position of the Government of Spain

47. On 26 March 2002, the then Minister for Foreign Affairs of Spain, Josep Piqué, published an open letter to Gibraltarians in the *Gibraltar Chronicle* (see A/AC.109/2002/11, para. 47).

48. At the 12th plenary meeting of the General Assembly, on 17 September 2002, the new Spanish Minister for Foreign Affairs, Ana Palacio, made a statement in which she referred to Gibraltar as follows:

> "Before concluding, I cannot fail to refer to the question of Gibraltar and the repeated mandates from this General Assembly urging Spain and the United Kingdom to continue their bilateral negotiations to reach a definitive solution to the dispute. I am pleased to report that throughout the past year the Governments of both countries have made intensive efforts to negotiate within that framework and have made substantial progress towards a solution. It is our wish to continue these negotiations in a constructive spirit with the aim of achieving as soon as possible a satisfactory and comprehensive agreement that will take into account the legitimate interests of the residents of the colony and continue to be based on the long-standing position adopted by the United Nations with respect to Gibraltar and confirmed year after year in the resolutions of this Assembly and in the Special Committee of 24.
>
> "As we embark on the twenty-first century, the time has come to settle this dispute based on the resolutions that have been adopted calling for the application of the principle of territorial integrity. Any attempt to disrupt the smooth progress of these negotiations, and thereby also to disregard the position of the United Nations, should therefore be condemned." (see A/57/PV.12)

49. Speaking at the 6th meeting of the Fourth Committee, on 4 October 2002 (see A/C.4/57/SR.6), the representative of Spain said that he was pleased to report that the Governments of Spain and the United Kingdom had, as urged by the General Assembly, continued to hold intensive negotiations to resolve all their differences over Gibraltar. At a ministerial meeting in February 2002, a joint press communiqué had been adopted, confirming their objective of overcoming their differences and

ensuring a secure future in which Gibraltar could preserve its way of life and traditions, enjoy greater internal self-government, sustain and enhance its prosperity and reap the full benefits of mutually beneficial cooperation in all fields, including the Campo region. In March 2002 the European Union and the European Parliament had endorsed the ongoing negotiations. Since then, further talks at various levels had been held, including a ministerial meeting in September 2002 at which the shared objective of resolving all differences had been reaffirmed.

50. The representative of Spain added that, throughout the negotiations, the Chief Minister of Gibraltar had been invited to participate, on the basis of the "two flags, three voices" formula, with his own distinct voice as part of the British delegation; but unfortunately he had never accepted those invitations. Instead, he had unilaterally, and without the endorsement of the United Kingdom as administering Power, made preparations for a referendum that lacked all legal basis or effect. It should be noted that such an initiative contravened the annual General Assembly decisions on the matter, which consistently urged negotiation by the Governments of Spain and the United Kingdom. His delegation reiterated its intention to work constructively towards a comprehensive agreement. With reference to the statements made recently before the Committee by the Chief Minister of Gibraltar and the Leader of the Opposition, he pointed out that Spain's position — in keeping with the principles of the relevant General Assembly resolutions and especially that of territorial integrity — had not changed in any way.

51. With respect to the referendum held in Gibraltar on 7 November 2002, the Vice-President of Spain, its Minister for Foreign Affairs and its Permanent Representative to the United Nations, among other officials, reiterated that it had no legal validity, while stressing the importance of continuing the bilateral Anglo-Spanish negotiations on the future of Gibraltar. Vice-President Mariano Rajoy spoke as follows in the aftermath of the referendum:

> "The outcome of the referendum was a foregone conclusion. There was a campaign only for the 'no' vote and the referendum was without any legal validity. Therefore, what is important to us now and what we are going to do in the period ahead is to continue the regular discussions that have been taking place between both the Ministers for Foreign Affairs and officials of the other departments concerned."[27]

## D. Anglo-Spanish negotiations

52. On 26 July 2001, the Ministers for Foreign Affairs of Spain, Josep Piqué, and of the United Kingdom, Jack Straw, relaunched talks on the subject of Gibraltar. The two joint communiqués issued at the end of their meetings held on 26 July 2001 and 20 November 2001 were reproduced in the previous working paper (see A/AC.109/2002/11, paras. 48 and 49).

53. A third joint communiqué was issued after the meeting held in London on 4 February 2002:

> "At our meeting today we continued to make good progress in our discussions about Gibraltar in the atmosphere of friendship and understanding which links the United Kingdom and Spain, reaffirming the full range of commitments that we assumed at our previous meetings in London and

Barcelona. Our common aim remains to conclude a comprehensive agreement before the summer, covering all outstanding issues, including cooperation and sovereignty. Both Governments confirmed that their shared objective is to overcome their differences over Gibraltar and to ensure a secure future for Gibraltar in which Gibraltar can preserve its way of life and traditions, enjoy greater internal self-government, sustain and enhance its prosperity, and reap the full benefits of a harmonious and mutually beneficial cooperation in all fields together with the wider region.

"We reiterate our invitation to the Chief Minister of Gibraltar to attend future Brussels Process meetings so that he, and through him the Gibraltarians, can join the current dialogue and contribute to it to the benefit of Gibraltar. We confirmed that the Chief Minister is warmly invited to participate on the basis of the Two Flags, Three Voices formula, having his own and distinct voice as part of the British delegation.

"Our intention is that the comprehensive agreement we seek will offer the best framework for a secure, stable and prosperous future for Gibraltar. In that framework, our objective is that Gibraltar can enjoy enhanced powers of internal self-government allowing its Government and population to have a greater say in their lives. We will invite the Government of Gibraltar to develop together with us the relevant ideas on this objective. We also took forward our work on all the possible ways of enhancing cooperation to improve the quality of the daily lives of people in Gibraltar and the Campo region. The United Kingdom and Spain reaffirmed that the aim of the arrangements they seek is to promote the highest levels of fruitful cooperation within the wider region, favouring better standards of living and working conditions in Gibraltar and the Campo, and fluid communications with the region.

"The Spanish Government recalled the arrangements it had made to allocate a further 70,000 telephone numbers for Gibraltar and reaffirmed that, as regards the technical responsibilities of the Spanish side, they are operational. It expressed its commitment to ensure that no obstacles prevent their immediate use for the benefit of all Gibraltarians. To that end, the United Kingdom and Spain agreed to engage in immediate talks to assess the situation and attain that objective. Both Governments also tackled the issue of pensions, a problem on which they will intensify their efforts to find a prompt solution consistent with the responsibilities of the public authorities involved."

54. Informal meetings between Mr. Straw and Mr. Piqué were held on 15 May and on 26 July 2002. After the latter meeting it was announced that the next formal bilateral meeting on Gibraltar would be held in Madrid on 12 July 2002. In July 2002 Josep Piqué was replaced as Foreign Minister by Ana Palacio. On 27 September 2002, the new Spanish Foreign Minister and her British counterpart met in London and issued a joint statement on a number of questions. Regarding Gibraltar, the statement read as follows:

"Our talks over the last year have made significant progress towards the shared goal of the Brussels Process of resolving the historic dispute, which would provide a settled, secure and more prosperous future for all Gibraltarians. This visit was a valuable opportunity for us to take stock. We shall continue working towards this objective."[28]

## E. Anglo-Gibraltarian discussions

55. The British position on discussions regarding Gibraltar was reiterated by the Foreign Secretary in his written response to the November 2002 report of Parliament's Foreign Affairs Committee:

> "[The Government] continues to believe that a process of discussion with Spain and the people of Gibraltar is right because it is in the interests of the people in Gibraltar, in the United Kingdom and in Spain. There remain real issues which have to be discussed with both. Whether those discussions take place next week, next month or next year, it is clear that the issues are not going to go away. We would do no one a service by ignoring them or simply hoping that they will disappear."[29]

56. Regarding Gibraltar's position, the Chief Minister spoke as follows in his 2003 New Year message:

> "The Government's position on dialogue will remain the same. We reject the view expressed by some people that we should not participate even in reasonable dialogue, even if our conditions are met. During the campaign of the last 12 months, the world's media continually pressed me on the "empty chair" aspect, i.e., why I wasn't taking part in talks. I was able to defend Gibraltar's position because I was able to demonstrate that our reasons for not taking part were reasonable and understandable ... And so we remain willing to negotiate in safely structured, reasonable, open-agenda dialogue with no predetermined outcome ... For us to adopt a no-dialogue stance would be to hand this advantage to Madrid and to others. We will not do that because we do not think that it is in Gibraltar's interests to do so. It is a gross oversimplification and an error to confuse dialogue with sovereignty transfer negotiations."

*Notes*

[1] Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, on 15 January 2003, as well as from official documents of the Government of Spain and published sources.

[2] *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 23* (A/7623/Rev.1), vol. III, chap. XI, annex, paras. 7-23.

[3] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex.

[4] Lords Hansard, Written Answer Text, 10 April 2002.

[5] Government of Gibraltar press release, "Chief Minister's New Year message", 1 January 2003 (unless other sources are mentioned, all statements by the Chief Minister quoted in the present working paper come from this press release).

[6] Gibraltar Elections 2000 web site (http://www.gibraltar.gi/election).

[7] British Overseas Territories Bill, Explanatory Notes, House of Lords, 26 June 2000.

[8] Government of Gibraltar press release, 11 July 2002.

[9] United Kingdom Parliament, Foreign Affairs Committee, Eleventh Report on Gibraltar, 5 November 2002.

[10] Foreign and Commonwealth Office Country Profile, Gibraltar, updated March 2002.

[11] *Gibraltar Chronicle*, 5 April 2001.

[12] European Commission press releases IP/02/1484 of 16 October 2002 and IP/02/1748 of 27 November 2002.

[13] Organisation for Economic Cooperation and Development, *Progress in Identifying and Eliminating Harmful Tax Practices*, June 2000.

[14] Agence France-Presse, 14 March 2002.

[15] *Gibraltar Chronicle* and *El Pais*, 15 March 2002.

[16] Press release of the Office of Diplomatic Information, Ministry of Foreign Affairs of Spain, 19 March 2002.

[17] Reuters and *El Pais*, 8 March 2001.

[18] Reuters, 4 October 2001.

[19] Government of Gibraltar press release, 22 March 2002, and *ABC*, 23 March 2002.

[20] Government of Gibraltar press release, 30 September 2002.

[21] *ABC*, *El Mundo* and *El Pais*, 3 August 2001.

[22] Government of Gibraltar press release, 23 January 2002.

[23] Gibraltar Tourist Board press release, 11 November 2002.

[24] Response of the Foreign Secretary to the United Kingdom Parliament, published in January 2003, regarding the Foreign Affairs Committee's Eleventh Report on Gibraltar, 5 November 2002.

[25] Press release dated 8 November 2002, accessed at www.fco.gov.uk.

[26] *Gibraltar Chronicle*, 19 March 2002.

[27] Agencia Europa Press, 8 November 2002.

[28] Press releases dated 27 September 2002, accessed at www.fco.gov.uk and www.mae.es.

[29] Response of the Foreign Secretary to the United Kingdom Parliament, published in January 2003, regarding the Foreign Affairs Committee's Eleventh Report on Gibraltar, 5 November 2002.